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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 247

WILLIAM T. REID,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS

And

BRIEF IN SUPPORT THEREOF.

FRANK J. LOONEY,
Attorney for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS.

William T. Reid, defendant in the District Court of the United States for the Western District of Louisiana and appellant in United States Circuit Court of Appeals, Fifth Circuit, files this his petition and prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above case, R. 75-77, and made final by denial of rehearing on July 17, 1943, R. 83.

Opinion Below.

The opinion of the Circuit Court of Appeals is unpublished, but appears on pages 75 and 76 of the Record.

Jurisdiction.

The case involves questions of criminal law and evidence, in which the decision of the Circuit Court of Appeals is final, unless review is ordered by this, the Supreme Court.

It is contended, that jurisdiction to review is vested in this Court under Section 347 (2) of Title 28 of the United States Code. See *United States v. Gulf Refining Co.*, 268 U. S. 542.

Statute Involved.

The Statute involved is Title 18, Section 89, United States Code.

Statement.

The charge in the indictment is threatening to take the life of the President of the United States on or about March 15, 1941, R. 3.

Demurrer and motion to quash were filed, R. 3 and 4, and were overruled, R. 64.

On trial, objection was made to the introduction of evidence concerning other alleged offenses not considered germane but pertaining to conversations of defendant to the effect that Germany was going to win the war, R. 18,

and suggesting to a prisoner in jail that defendant herein would pay said prisoner's way to Germany, R. 15. This evidence was admitted over objection and exception taken, R. 15-18.

A verdict of guilty was returned by the jury, R. 68.

Motion for new trial was made and overruled and appeal taken, R. 71.

The case was heard in the Court of Appeals and judgment rendered June 17, 1943, R. 77.

Motion for rehearing was filed and denied July 17, 1943, R. 83.

Petition for stay of mandate was filed and allowed for 30 days pending this petition.

Questions Presented.

1. Is a statement of a defendant purporting to show subversive leaning toward the enemy used in a conversation with another person more than a year subsequent to the alleged offense and made after the United States had declared war admissible in evidence in a trial for making threats against the life of the President at a previous time, before the United States was at war?

2. Does the offense created by Title 18, Section 89, United States Code, include an oral conditional threat against the President, not charged to have been communicated to him?

Reasons for Granting Writ.

1. In holding under a charge of threatening to take the life of the President, that evidence was admissible of subversive remarks uttered more than a year after the date of the alleged offense, the decision in this case by the Fifth Circuit Court of Appeals is in direct conflict with the decisions of the Fourth Circuit Court of Appeals in case of *Hall v. United States*, 256 F. 748, and also in substantial conflict with *Boyd v. United States*, 142 U. S. 450, long recognized as controlling on this point.

2. The word "otherwise" used in Title 18, Section 89, under the rule *ejusdem generis* limits the offense to acts similar to those set forth in the first part of the Statute and contemplates a letter or other instrument in writing sent through interstate commerce, or other medium within Federal jurisdiction.

This is emphasized by the acts of Congress, U. S. Code title 18, section 338 (a) and Title 18, Section 408 (d) prohibiting mailing communications and transmitting such in interstate commerce, which offenses prescribed the identical punishment as does the Statute herein considered.

The construction thus placed on the statute is in conflict with the decisions of the Supreme Court of the United States beginning with *U. S. v. Bevans*, 3 Wheaton 338, and including *First National Bank v. Anderson*, 269 U. S. 341, the earlier case having been decided by Chief Justice Mar-

shall, who said, "by the words 'other place' was intended another place of a similar character with those previously enumerated".

Transcript of record below is attached hereto and made part hereof.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, the full and complete transcript of the record and all proceedings in the cause numbered and entitled on its docket No. 10,624, William T. Reid, appellant, v. United States of America, appellee, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Court and that your petitioners be discharged without day and have such other and further relief in the premises as this Honorable Court may deem just and proper.

FRANK J. LOONEY,
Attorney for Petitioner.